

**Appln No. 09/775,315**  
**Amdt date January 18, 2005**  
**Reply to Office action of October 15, 2004**

**REMARKS/ARGUMENTS**

In the Office action dated October 15, 2004, the examiner rejected claim 10 under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Patent No. 5,783,333 to Mayer. However, applicants have amended claim 10 to recite the substantial evaporation of the binder during heat-treatment. Mayer fails to teach or suggest such a feature. Rather, Mayer discloses a binder provided in a solvent. The oxides in Mayer are mixed with the binder solution to form a slurry. The *solvent* is then evaporated, and the resulting mixture is then heated to the melting point of the binder, and then allowed to cool. (Column 12, line 57 to Column 13, line 2). In contrast, amended claim 10 discloses the substantial evaporation of the *binder* during heat treating of the mixture of oxides. Because Mayer discloses only the evaporation of the solvent in which the binder is provided, and fails to teach or suggest the substantial evaporation of the binder itself, amended claim 10 is allowable over Mayer.

The examiner also rejected claims 1-4 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 5,429,890 to Pynenburg, et al. in view of U.S. Patent No. 5,370,948 to Hasegawa, et al. In so rejecting, the examiner notes that absent unexpected results, the excess of lithium manganese oxides recited in independent claim 1, is an "optimizable parameter[] for [a] result-effective variable[]." (Office action, page 3). However, applicants note that the excess of lithium manganese oxides recited in claim 1, does provide unexpected results, as described in the specification. For example, the specification beginning at page 5, line 22, describes the different properties of nickel manganese based oxides and manganese based oxides. In fact, the two oxides are described as having the opposite properties. Specifically, the nickel-manganese-based oxides exhibit high capacity but inferior charge and discharge characteristics and thermal stability, while the manganese based oxides exhibit good charge and discharge capacity and thermal stability, but low capacity. The synergistic effect of the combination of oxides is also described.

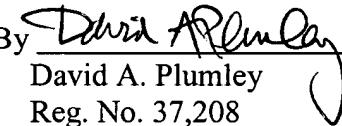
Moreover, the specification beginning at page 6, line 5, and at page 12, line 11, describes the ratio of components as being important in maximizing the synergistic effect of the

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combination of nickel-manganese-based oxides and manganese-based oxides. Because the excess of lithium manganese oxides, as recited in claim 1, provide unexpected results, as described above, independent claim 1, and all claims dependent therefrom, including claims 2-4, are allowable over Pynenburg in view of Hasegawa.

Claims 1-4 and 10 remain pending in this application. Applicants have amended claim 10. Applicants submit that all of pending claims 1-4 and 10, as amended are in condition for allowance. Applicants therefore request a timely indication of allowance. However, if there are any remaining issues, the examiner is asked to contact applicants' counsel at the number below.

Respectfully submitted,  
CHRISTIE, PARKER & HALE, LLP

By   
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David A. Plumley  
Reg. No. 37,208  
626/795-9900

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